IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN

MOTOROLA MOBILITY, INC., and GENERAL INSTRUMENT CORPORATION,))) Civil Action No.	10-cv-699	
Plaintiffs,))	. M.C. 1	
VS.) District Judge William M. Conley) Magistrate Judge Stephen L. Crocke	
MICROSOFT CORPORATION,)		
Defendant.)		

<u>MOTION TO DISMISS, STAY OR,</u> IN THE ALTERNATIVE, TRANSFER VENUE

Microsoft Corporation ("Microsoft"), by and through its counsel, hereby respectfully moves this Court for an order dismissing Motorola Mobility, Inc. and General Instrument Corporation's (collectively, "Motorola") complaint on the basis that it asserts claims that are compulsory counterclaims in Microsoft's pending suit (2:10-cv-1823) against Motorola in the Western District of Washington. The prior-filed Washington suit involves facts and legal disputes that are central to and would require resolution before Motorola could receive any relief in this case. Even if plaintiffs' claims were not compulsory counterclaims such that this case should be dismissed or stayed, the Court should in the alternative transfer this case to the Western District of Washington pursuant to 28 U.S.C. § 1404, because the Western District of

¹ This motion is directed to Motorola's first suit (No. 10-cv-699) (the "699 Case"), which identifies U.S. Patent Nos. 7,310,374 (the "'374 patent"), 7,310,375 (the "'375 patent"), and 7,310,376 (the "'376 patent"). (699 Case, Complaint) (Docket No. 1.) Motorola's second suit (10-cv-700) (the "700 Case") identifies U.S. Patent Nos. 6,980,596 (the "'596 patent"), 7,162,094 (the "'094 patent"), 5,319,712 (the "'712 patent"), 5,357,571 (the "'571 patent"), 6,686,931 (the "'931 patent"), and 5,311,516 (the "'516 patent"). (700 Case, Complaint) (Docket No. 1.) Microsoft has filed a separate motion in the second suit.

Washington hosts a first-filed action involving the same underlying facts and subject matter and also is a more convenient venue.

The complete bases for the relief sought are set forth with particularity in the accompanying Memorandum in Support.

Dated this 20th day of December, 2010.

MICHAEL BEST & FRIEDRICH, LLP

By: s/J. Donald Best

J. Donald Best, SBN 1012450 Christopher C. Davis, SBN 1064764 P. O. Box 1806

Madison, WI 53701-1806 Tel: (608) 257-3501 Fax: (608) 283-2275

Email: jdbest@michaelbest.com

ccdavis@michaelbest.com

Charles J. Crueger, SBN 1029825 100 East Wisconsin Avenue, Suite 3300 Milwaukee, WI 53202

Tel: (414) 271-6560 Fax: (414) 277-0656

Email: cjcrueger@michaelbest.com

Attorneys for Defendant Microsoft Corporation

Of Counsel:

David T. Pritikin dpritikin@sidley.com
Richard A. Cederoth rcederoth@sidley.com
Douglas I. Lewis dilewis@sidley.com
John W. McBride jmcbri01@sidley.com
SIDLEY AUSTIN LLP
One South Dearborn
Chicago, Illinois 60603
(312) 853-7000

T. Andrew Culbert andycu@microsoft.com David E. Killough

davkill@microsoft.com

MICROSOFT CORPORATION

1 Microsoft Way Redmond, Washington 98052

Telephone: 425-703-8865 Facsimile: 425-869-1327